

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM H. BETTCHER, KEITH A. FURGALUS
and JOSEPH HUMMEL

Appeal No. 95-3940
Application 08/206,022¹

HEARD: May 6, 1997

Before McCANDLISH, Senior Administrative Patent Judge, and
ABRAMS and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

¹ Application for patent filed February 25, 1994.
According to appellants, this application is a continuation of
Application 08/058,683 filed May 3, 1993, now abandoned, which
is a continuation of Application 07/651,139 filed February 6,
1991.

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DECISION ON APPEAL

This is an appeal from the examiner's final rejection of claims 54, 55, 58, 60 and 61. Claims 15, 16, 18-29, 32, 33, 48-50, 56 and 57 have been canceled. Claims 1-14, 17, 30, 31, 34-47, 51-53, 59 and 62-64 have been found allowable.

Claim 54 is illustrative to the subject matter on appeal and recites:

54. A cut-resistant yarn suitable for machine knitting, having a core of at least 150 denier comprised of synthetic fiber and the following wraps wound about the core:

(a) one or more wraps W1 of synthetic fiber, at least two turns per inch, said turns being widely spaced each from the next, the first of said wraps W1 wound directly about the core;

(b) a wrap W2 of flexible metal wire having a maximum diameter of 0.010 inch, two to twelve turns per inch, disposed about the wrap or wraps W1;

(c) a wrap W3 of 300 to 2000 denier synthetic fiber disposed about the wrap W2, the turns being directly adjacent each other; and

(d) a wrap W4 of 300 to 2000 denier synthetic fiber disposed about the wrap W3, the turns being directly adjacent each other.

THE REFERENCES

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The following reference is relied on by the
examiner:

Kolmes et al. (Kolmes)	4,838,017	June 13,
1989		

THE REJECTIONS

Claims 54, 55, 58, 60 and 61 stand rejected under 35
U.S.C. § 103 as being unpatentable over Kolmes.

The appellants have indicated that all the claims
stand or fall together (Brief at page 4).

Rather than reiterate the entire arguments of the
appellants and the examiner in support of their respective
positions, reference is made to appellants' brief (Paper No.
10) and reply brief (Paper No. 12), and the examiner's answer
(Paper No. 11) for the full exposition thereof.

OPINION

In reaching our conclusions on the issues raised in
this appeal, we have carefully considered appellants'
specification and claims, the applied reference, and the
respective viewpoints advanced by the appellants and the
examiner. As a consequence of our review, we have made the
determination that the rejection of claims 54, 55, 58, 60 and

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61 should not be sustained. Our reasons for this determination follow.

The rejection is based upon lack of patentability under 35 U.S.C. § 103. In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if the burden is met does the burden of coming forward with evidence or argument shift to the appellants. Id., if the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

It is examiners position that:

It would have been obvious to one of ordinary skill in the art to exchange the inner most wire 22' of the figure 5 embodiment for a strand of synthetic material in view of the suggestion in the figure 2 embodiment so that the amount of wire may be reduced thereby increasing the flexibility of the overall yarn and reducing its weight and in view of the teaching in column 2 that if a polyester or fiber bottom wrap is used, it tends to aid in holding all the covering onto the core. [Examiner's Answer at page 3]

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Appellants argue that there is no motivation to replace the innermost wire wrap of Kolmes Figure 5 with a fiber wrap. After reviewing the disclosure of Kolmes, we agree with the appellants. Although Kolmes does disclose that the positions of the wire wrap 22 and fiber wrap 24 in figure 2 may be reversed, there is no suggestion in Kolmes that one of the wire wraps 22' in figure 5 be replaced with a fiber wrap. In addition, fiber wrap 24 is closely wrapped and thus, if placed next to the core would not be "widely spaced" as recited in claim 54 from which claims 55, 58, 60 and 61 depend. In view of the foregoing, we will not sustain the rejection of the examiner.

The decision of the examiner is reversed.

REVERSED

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HARRISON E. McCANDLISH, Senior))	
Administrative Patent Judge)	
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NEAL E. ABRAMS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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